

JOHN L. STAMBAUGH

IBLA 73-248

Decided May 22, 1973

Appeal from the decision of the Nevada State Office of the Bureau of Land Management denying reinstatement of oil and gas lease Nev-061549-G.

Affirmed.

Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay advance rental timely where the petitioner has not shown that his failure to pay the rental fee on or before the anniversary date of the lease was justifiable or not due to lack of reasonable diligence.

APPEARANCES: John L. Stambaugh, pro se.

OPINION BY MR. STUEBING

John L. Stambaugh has appealed from the January 4, 1973, decision of the Nevada State Office of the Bureau of Land Management, which held his oil and gas lease had terminated for nonreceipt of the annual rental on or before the anniversary date, and denied his request that the lease be reinstated.

The record shows that the rental was due on or before December 1, 1972. Payment was received by mail at the Nevada State Office in Reno on December 7 in an envelope postmarked "PM 30 Nov 1972" at Myerstown, Pennsylvania. On December 8 the Nevada State Office notified Mr. Stambaugh that the lease had terminated by operation of law and explained that he might petition for reinstatement of the lease. Enclosed with this letter was a copy of the regulations which govern the filing and allowance of petitions for reinstatement. On December 20, appellant wrote to the Nevada State Office stating that his records

indicated that the payment was mailed on November 29 rather than November 30, as indicated by the postmark, and requested reinstatement of the lease.

The decision of January 4, 1973, denied reinstatement and asserted that Mr. Stambaugh "did not follow mandatory procedural requirements" in filing his petition, although the decision failed to point out in what particulars the petition was deficient.

In his statement of reasons for appeal the appellant does not reiterate his contention that the payment was in fact mailed on November 29. However, he asserts that the late payment was "due to the poor U.S. mail service," asserting that, "all of a sudden the mails have been so late no one can figure when or if at all a letter will be delivered."

We note that the payment was sent by regular mail (not air mail or special delivery). Even under optimum conditions and by the most expeditious service, it is not reasonable to anticipate that a letter mailed on the afternoon of November 30 in Pennsylvania will be delivered to the addressee in Nevada during business hours on December 1. Even if we assume that the payment was mailed the previous day, we cannot credit the appellant with due diligence.

When payment of the annual rental for such a lease is not received on or before the anniversary date the lease is not terminated by the act, deed or decision of any federal employee. Rather, the lease terminates automatically by operation of law, as required by the Act of July 29, 1954, 30 U.S.C. § 188 (1970), and the fact that such termination has occurred is merely noted by the Bureau officer and communicated to the lessee. However, the law permits reinstatement of terminated leases under certain circumstances at the discretion of the Secretary of the Interior. In order to qualify, the lessee must establish to the satisfaction of the Secretary that his failure to pay timely was either justifiable or not due to a lack of reasonable diligence on his part. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c)(2). Under the circumstances of this case we cannot find that the appellant has shown that he mailed the payment in a manner and in sufficient time so that in the normal course of events the payment would be timely received, or that his failure to do so was justifiable for any reason. Charles E. Reynolds, 9 IBLA 300 (1973); see Louis Samuel, 8 IBLA 268 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing, Member

We concur:

Frederick Fishman, Member

Anne Poindexter Lewis, Member

